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Attorneys for Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re	)	Case No. 11-37108-rld11
ERP-Link Corp.,	)	DEBTOR'S MOTION FOR ORDER
	)	ASSUMING AND ASSIGNING
Debtor.	)	CERTAIN EXECUTORY CONTRACTS
	)	PURSUANT TO SECTIONS 105 AND
	)	365 OF THE BANKRUPTCY CODE

ERP-Link Corp., the debtor and debtor in possession in this case (the "Debtor"), hereby moves the court (the "Motion") for entry of an order assuming certain executory contracts and assigning them to a purchaser of the Debtor's assets pursuant to 11 USC §§ 105 and 365. In support of the Motion, the Debtor respectfully represents as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested are Sections 105(a) and 365 of Title 11 of the United States

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CERTAIN EXECUTORY CONTRACTS PURSUANT TO SECTIONS 105 AND 365 OF
THE BANKRUPTCY CODE

1 Code (the "Bankruptcy Code").¹

2 **BACKGROUND**

3 2. On August 17, 2011, the Debtor filed a voluntary petition for relief under
4 Chapter 11 of the Code. The Debtor remains as debtor in possession. No Trustee or
5 Creditors Committee has been appointed.

6 3. On August 16, 2011, the Debtor signed an Asset Purchase Agreement
7 (the "APA") with Gimmel Holdings LLC ("Purchaser"), pursuant to which the Debtor will
8 sell to Purchaser (or other successful bidder) substantially all of the assets of the estate.
9 Anderson Declaration, ¶ 29.

10 4. The Debtor proposes to sell substantially all of its assets to Purchaser
11 subject to the terms of the APA. *Id.*, ¶ 31.

12 **THE EXECUTORY CONTRACTS**

13 5. The Debtor is a party to numerous executory contracts (the "Contracts").
14 *Id.* ¶ 32. A list of the Contracts is attached hereto as Exhibit 1.²

15 6. As part of the contemplated sale of its assets, the Debtor has agreed,
16 among other things, to assume and assign to Purchaser some or all of the Contracts to
17 the Purchaser as requested by Purchaser. *Id.* ¶ 33.

18 7. The Debtor believes that it is in default with respect to only one Contract.
19 This is a monetary default in the amount of \$76,499.00 relating to the Contract between
20 the Debtor and Norikkon (the "Norikkon Contract"). The Debtor is working with the
21 Purchaser and Norikkon to negotiate a cure for the default. *Id.* ¶ 34.

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23
24 ¹ All Section references are to the Bankruptcy Code unless noted otherwise.

25 ² The list of Contracts to be assumed and assigned remains subject to review, and the
26 Debtor reserves the right to add or remove any Contracts before the closing date of the
sale transaction.

RELIEF REQUESTED

8. The Debtor seeks authorization, pursuant to Sections 105(a) and 365, to assume the Contracts and assign them to the Purchaser or any other purchaser of the Debtor's assets.

BASIS FOR RELIEF REQUESTED

9. Section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject an executory contract or an unexpired lease." 11 USC § 365(a). In determining whether to approve the assumption or rejection of an executory contract or unexpired lease, courts employ the "business judgment" standard. *Durkin v. Benedor Corp. (In re G.I. Indus.)*, 204 F3d 1276, 1282 (9th Cir 2000); *Robertson v. Pierce (In re Chi-Feng Huang)*, 23 BR 798, 800 (9th Cir BAP 1982). Under this standard, assumption or rejection is appropriate if the debtor in possession can demonstrate that it will benefit the bankruptcy estate. See *Westship, Inc. v. Trident Shipworks, Inc.*, 247 BR 856, 866 (MD Fla 2000); *Commercial Fin. Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.)*, 47 BR 425, 427 (D Haw 1985).

10. If a debtor in possession's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. See, e.g., *NLRB v. Bidisco & Bidisco*, 465 US 513, 523 (1984); *Johnson v. Fairco Corp.*, 61 BR 317, 320 (Bankr ND Ill 1986). In applying the "business judgment" standard, courts show great deference to a debtor in possession's decision to reject an unexpired lease. *Durkin*, 204 F3d at 1282; *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 BR 310, 315 (Bankr D Utah 1981).

11. A debtor may assign an executory contract, provided it is assumed under Section 365(a), any defaults are cured, and the assignee provides adequate assurance of future performance. 11 USC §§ 365(b)(1)(A), (f)(2). The default with respect to the

Norikkon Contract, and any other defaults determined to exist under any of the Contracts, will be cured. The Purchaser has demonstrated that it is an established company with the financial wherewithal to perform under the Contracts. Anderson Declaration, ¶ 35.

12. As stated above, the assumption and assignment of the Contracts is a necessary part of the Debtor's agreement to sell its assets to the Purchaser.

13. Based upon the foregoing facts and circumstances, the Debtor submits that the assumption and assignment of the Contracts set forth in Exhibit 1 hereto is supported by sound business judgment, and is necessary, prudent, and in the best interests of the Debtor, its estate, creditors, and parties in interest.

NOTICE

14. The Debtor has provided a notice of this Motion and the proposed assignment of contracts (the "Notice") to the 20 largest unsecured creditors, the counterparties to each of the Contracts, and the Office of the United States Trustee. A copy of the proposed Notice is attached hereto as Exhibit 2. The Debtor reserves the right at any time up to the closing date of the APA, and even after entry of an order granting in whole or in part the Motion, to elect not to assume or assign any contract that is the subject of this Motion. The Debtor submits that no other or further notice is required under the circumstances.

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CERTAIN EXECUTORY CONTRACTS PURSUANT TO SECTIONS 105 AND 365 OF
THE BANKRUPTCY CODE

1 WHEREFORE, the Debtor respectfully requests entry of an order granting the
2 relief sought herein and such other and further relief as the court may deem proper.

3 DATED this 17th day of August, 2011.

4 SUSSMAN SHANK LLP

5 */s/ Howard M. Levine*

6 By _____
7 Howard M. Levine, OSB No. 800730
8 Timothy A. Solomon, OSB No. 072573
9 Attorneys for Debtor and Debtor-in-Possession

10 F:\CLIENTS\21470\001\PLEADINGS\IP-MOTION TO ASSUME CONTRACTS (FINAL).DOC

Name	Address1	Address2	City	State	Zip	Country	Description
5280 Solutions LLC	8740 Lucent Blvd Suite 400		Highlands Ranch	CO	80129-0000		Bi-Lateral Non-Disclosure Agreement
5th & Washington, LLC	ATTN: Bruce Wood	510 SW 5th Ave	Portland	OR	97201-0000		Office Space Lease
Abb Inc.	16250 W Glendale Drive		New Berlin	WI	53151-0000		Confidentiality Agreement
Aditi	2002 156th Ave NE		Bellevue	WA	98007-0000		Master Service Agreement
AgilePoint, Inc.	1916C Old Middlefield Way		Mountain View	CA	94043-0000		Partner Agreements
Algonquin Group	556 S. Fair Oaks Ave	Suite 101-448	Pasadena	CA	91105-0000		Sub Contractor Professional Services Agreement
Aptar Group	340-B Commerce Drive		Crystal Lake	IL	60114-0000		Annual Software License Agreement
Ascentn	1916 C Old Middlefield Way		Mountain View	CA	94043-0000		Non-Disclosure Agreement
Aster Group, Inc	434-B Cooperfield Blvd NE		Concord	NC	28025-0000		Partner Agreement
Avantice Capital1	3838 Tamiami Trail N	Suite 416	Naples	FL	34103-0000		Confidentiality Agreement
Avnet Client Solutions	14 Joyce Way	Parkwest Business Park	Dublin 12, Ireland				Non-Disclosure Agreement
Baker & McKenzie Global Servic	130 East Randolph St	Suite 3600	Chicago	IL	60601-0000		Mutual Confidentiality and Non-Disclosure Agreement
Blue Granite, Inc	4664 Campus Drive		Kalamazoo	MI	49008-0000		Premier Partner Agreement
Blum Shapiro Consulting, LLC	29 S Main Street	PO Box 27200	West Hartford	CT	06127-2000		Premier Partner Agreement
Borg Warner	3850 Hamlin Road		Ann Arbor	MI	48326-0000		Annual Software License Agreement
BP Corporation of N.A. Inc.	PO Box 22024		Tulsa	OK	74121-0000		Software Support Agreement
BP Corporation of N.A. Inc.	PO Box 22024		Tulsa	OK	74121-0000		Software License Agreement
Calgon Carbon	PO Box 717		Pittsburgh	PA	15230-0000		Software Support Agreement

Calgon Carbon	PO Box 717	Pittsburgh	PA	15230-0000	Software License Agreement	
Cardian BCT	10811 W Collins Ave	Lakewood	CO	80215-0000	Annual Software License Agreement	
Cardian BCT	10811 W Collins Ave	Lakewood	CO	80215-0000	Professional Services Agreement	
Ceradyne, Inc.	3169 Red Hill Avenue	Costa Mesa	CA	92626-0000	Annual Software License Agreement	
Christopher Kruehl	PO Box 10061	Portland	OR	97296-0000	Sub Contractor Professional Services Agreement	
Coca Cola Bottling Co.	Consolidated	Charlotte	NC	28211-0000	Annual Software License Agreement	
ConocoPhillips Company	PO Box 2200	Bartlesville	OK	74005-0000	Software Support Agreement	
ConocoPhillips Company	PO Box 2200	Bartlesville	OK	74005-0000	Software License Agreement	
CSG Professional Services Inc	5201 SW Westgate Drive	Portland	OR	97221-0000	Bi-Lateral Non-Disclosure Agreement	
Datalan Corporation	3 Barker Avenue	White Plains	NY	10601-0000	Premier Partner Agreement	
Datalogic Scanning (PSC, Inc)	959 Terry St	Eugene	OR	97402-0000	Software Support Agreement	
Datalogic Scanning (PSC, Inc)	959 Terry St	Eugene	OR	97402-0000	Software License Agreement	
DX Network Services	DX House, Ridgeway	Iver Bucks		SLO 94A	GREAT BRITAIN	Software Support Agreement
DX Network Services	DX House, Ridgeway	Iver Bucks		SLO 94Q	GREAT BRITAIN	Software License Agreement
ELBA Buerosysteme GmbH & Co KG	Maybachstr. 2	D-45891 Gelsenkirchen	Germany		GERMANY	Software License Agreement
Electronic Data Systems	5400 Legacy Drive	Plano	TX	75024-0000		Confidentiality Agreement
Eli Jones	857 Winchell St.	Portland	OR	97217-0000		Employment Agreement
Eli Jones	857 Winchell St.	Portland	OR	97217-0000		NDA & Assignment of Rights/Invention Agreement
ERT3WS	3 Burowspace	Bievres France		91571 Cedex		Premier Partner and Master Distributor Agreement

Espero Inc.	12641 N 70th Place	Scottsdale	AZ	85254-0000	Consulting Agreement	
Factory Software SRL	Via S Ambrogio 17	27058 Voghera	ITALY		Partner Agreements	
Fresenius Medical Care	Deutschland GmbH	Eise-Kroener-Strasse 1	61352 Bad Homburg v.d.H	GERMANY	Annual Software License Agreement	
Gimmel Group	24 Greenway Plaza	Suite 1000	Houston	TX	77046-0000	Partner Agreements
Gimmel Group	24 Greenway Plaza	Suite 1000	Houston	TX	77046-0000	Software License Agreement
Global Software Resources, Inc	4447 Stoneridge Dr	Pleasanton	CA	94588-0000	Premier Partner Agreement	
Gus Timari	2480 Irvine Blvd.	Apt 344	Tustin	CA	92782-0000	NDA & Assignment of Rights/Invention Agreement
Gustavo Velez	29540 SW Courtside	Unit 7	Wilsonville	OR	97070-0000	Sub Contractor Professional Services Agreement
H & E Equipment Services	11100 Mead Rd	Suite 200	Baton Rouge	LA	70816-0000	Annual Software License Agreement
Harman International	PO Box 550	Farmington	MI	48332-0000	Software Support Agreement	
Harman International	PO Box 550	Farmington	MI	48332-0000	Software License Agreement	
Hospex Consulting Services	5 C Canal Park Guilberg II	Lahore, Punjab	54660	PAKISTAN	Premier Partner Agreement	
Hostess Brands Corp.	1 E. Armour Blvd	PO Box 419627	Kansas City	MO	64141-6227	Annual Software License Agreement
HSR	via Olgettina 60	20132 Milano	Gilbert	ITALY	Annual Software License Agreement	
Ignatius du Plessis	609 N Acacia Drive		AZ	85233-0000	Confidentiality, Proprietary Rights and Non-Competition Agreement	
Infosys	Electronics City, Hosur Road	Bangalore 560 100, India,			Partner NDA	
International Foods &	Fragrance - USA	521 W 57TH St.	New York	NY	10019-0000	Annual Software License Agreement
Intuitive	Godoy Cruz 2841 3er Piso	Buenos Aires	CP: c1425 FOM	ARGENTINA	Partner Agreements	
IQX Business Solutions	133 Alexander Street	Crows Nest, Sydney NSW	2065	AUSTRALIA	Premier Partner Agreement	

ISA	Calle 12 Sur NO.	18-168 Medellin, Columbia	Annual Software License Agreement
IT Systems, AG	Zwickystrasse 7	Zurich-Wallestein CH-8304	SWITZERLAND Partner NDA
IT Workplace, LTF	15 Wheeler Gate	Nottingham NG12NA	ENGLAND OEM License Agreement
IT Work	406 Farmington Avenue	Farmington CT	06032-0000 Fees Due Settlement Agreement
Itsystems AG	Zwickystrasse 7	CH-8304 Zurich-Wallisellen	SWITZERLAND Non-Disclosure Agreement
ITWorx	406 Farmington Avenue	Farmington CT	06032-0000 Partner Agreements
Janus Capital Management LLC	151 Detroit Street	Denver CO	80206-0000 Annual Software License Agreement
Janus Capital Management LLC	151 Detroit Street	Denver CO	80206-0000 Professional Services Agreement
John Kallen Konsult, AB	Fleminggatan 55	11232 Stockholm	SWEDEN NDA & Assignment of Rights/Invention Agreement
John Kallen Konsult, AB	Fleminggatan 55	11232 Stockholm	SWEDEN Sub Contractor Professional Services Agreement
Josef Leicht	1065 E. Flamingo Rd.	Apt 1017 Las Vegas NV	89119-0000 NDA & Assignment of Rights/Invention Agreement
Key2 Consulting, LLC	1000 Peachtree Industrial Blvd	Suite 6-289 Suwanee GA	30024-0000 Premier Partner Agreement
KI Business Performance GmbH	Mittlstr. 12-14	50672 Cologne	GERMANY BI-Lateral Non-Disclosure Agreement
KnowledgeLake	3 City Place Drive	Suite 700 St. Louis MO	63141-0000 Partner Agreements
Kraft Foods Global, Inc.	PO Box 795129	San Antonio TX	78279-5129 Software Support Agreement
Kraft Foods Global, Inc.	PO Box 795129	San Antonio TX	78279-5129 Software License Agreement
L'Oreal USA Products, Inc	310 SW 4th Ave., Ste 400	Portland OR	97204-2350 Service Provider Agreement
Leigh Investments	PO Box 364	Vancouver WA	98666-0000 Storage Space Lease
Lockheed Martin Corporation	P.O. Box 650003	Dallas TX	75265-0003 Annual Software License Agreement

Logica, UK	250 Brook Drive Green Park	Reading	RG2 GUB	GREAT BRITAIN	Confidentiality Agreement
Mayank Bakshi	1058 215th Pl. SE	Bothell	WA	98021-0000	NDA & Assignment of Rights/Invention Agreement
Miami-Dade County	Public Schools	Miami	FL	33101-0000	Annual Software License Agreement
Microsoft Corp	One Redmond Way	Redmond	WA	98052-0000	ISV Partner Agreement
Microsoft Hong Kong Limited	13/F., Cyberport 2	HONG KONG	CHINA		Partnership Agreement
Minotaur Development	Darren Moore	Tempe	AZ	85284-0000	Sub Contractor Professional Services Agreement
Minto Group	180 Kent St. Suite 200		Ontario	K1P 0B6	Annual Software License Agreement
Monsanto Company	PO Box 66900	St. Louis	MO	63166-6900	Annual Software License Agreement
Navantis Inc.	21 Randolph Ave. 3rd Floor	Toronto, Ontario M8P 4G4	CANADA		Premier Partner Agreement
Neudesic	8105 Irvine Center Dr.	Irvine	CA	92618-0000	Partner Agreements
New Markets Management	Consulting GbR	Salomon-Heine-Weg 36b	20251 Hamburg	GERMANY	Consulting Agreement
NINTEX	10900 NE Bellevue	Bellevue	WA	98004-0000	Partner Agreements
Norikkon	1218 Oxford Place	Cary	NC	27511-0000	Master Service Agreement
Norikkon, LLC	1218 Oxford Place	Cary	NC	27511-0000	Partner NDA, and Lateral Partner Reseller Agreement
NPL Construction Company	2355 W. Utopia Road	Bldg #3	AZ	85027-0000	Software Support Agreement
NPL Construction Company	2355 W. Utopia Road	Bldg #3	AZ	85027-0000	Software License Agreement
Ontario Power Generation	135 W. Beaver Creek	Richmond Hill	Ontario	L4B 4R7	Annual Software License Agreement
Pace Performance	P.O. Box 6707	Portland	OR	97208-0000	Partner Agreements
Patrick Theobald	Olgasstrabe 15	D-70185	Stuttgart	GERMANY	Confidential Settlement Agreement and Mutual General Release

Profit Path Systems LLC	PO Box 1004	Milltown	NJ	08850-0000	Business Cooperation Agreement
Quantrix	428 Fore Street	Portland	ME	04101-0000	Non-Disclosure and Restricted Use Agreement
ReadSoft	3838 N. Causeway Blvd.	Metairie	LA	70002-0000	Partner Agreements
SAP, AG	Diemmar-Hop-Allee 16	Waldorf	GERMANY	50010-0000	ISV Partner Agreement
Sauer-Danfoss	2800 East 13th St	Ames			Annual Software License Agreement
Siemens	5800 Granite Parkway	Plano	TX	75024-0000	Professional Services Agreement
Strion Systems GmbH	Bloherfelder Strabe 251 B	Oldenburg	OR	97224-0000	Confidential Settlement Agreement and Mutual General Release
Sterling Communications	14945 SW Sequoia Pkwy	Portland			Service Agreement
Targit (U.S.) Inc.	3450 Buschwood Park Dr.	Tampa	FL	33618-0000	Bi-Lateral Non-Disclosure Agreement
Taulia	100 Pine Street	San Francisco	CA	94111-0000	Partner Agreements
TechCFO	PO Box 8608	San Jose	CA	95155-0000	Service Agreement
The Glenture Group LLC	3000 Dundee Rd., Ste 215	Northbrook	IL	60062-0000	Premier Partner Agreement
The Toro Company	811 Lyndale Ave. S	Bloomington	MN	55420-0000	Confidentiality and Non-Use Agreement
Theobald Software GmbH	Olgastraße 15	Stuttgart	GERMANY		Confidential Settlement Agreement and Mutual General Release
Thorogood Associates	Ealing Studios Ealing				Non-Disclosure and Restricted Use Agreement and Product Evaluation/ Loaner Agreement
TIE International	Schiphol-Rijk	The Netherlands			Product Evaluation Agreement
Todd Mackey	226 Hill Ct.	Castle Rock	CO	80104-0000	Employment Agreement
Todd Mackey	226 Hill Ct.	Castle Rock	CO	80104-0000	NDA & Assignment of Rights/Invention Agreement
Tyson Foods Inc.	PO Box 2020	Springdale	AR	72762-0000	Annual Software License Agreement

UNICOR	Federal Prison Industry	PO BOX 4000	Bulter	NC	27509-4000	Annual Software License Agreement
Unternehmensberatung GmbH	Bloherfeld Strabe 253	D-26129	Oldenburg			Confidential Settlement Agreement and Mutual General Release
W.R. Grace	PO Box 1927		Lake Charles	LA	70602-0000	Software Support Agreement
W.R. Grace	PO Box 1927		Lake Charles	LA	70602-0000	Software License Agreement
Wipro Limited	Doddakannelli, Sarjapur Rd.	Bangalore, Karnataka 560 035,			INDIA	Reseller and Premier Partner Agreement
Wisner Consulting	15718 NW Wisner		Portland	OR	97229-0000	Partner Agreements

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Attorneys for Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re	)	Case No. 11-37108-rld11
ERP-Link Corp.,	)	[PROPOSED]
	)	NOTICE OF INTENT TO ASSUME AND
Debtor.	)	ASSIGN EXECUTORY CONTRACTS
	)	AND NOTICE OF HEARING

NOTICE OF ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS:

ERP-Link Corp., the debtor and debtor in possession in the above-captioned Chapter 11 bankruptcy case (the "Debtor") is a party to an Asset Purchase Agreement dated August 16, 2011 (the "APA"), between the Debtor and Gimmel Holdings LLC. The Debtor has asked the Court to approve the APA and to approve the sale of substantially all the Debtor's assets to Gimmel Holdings LLC or, if higher qualifying bids are received, to the highest and best bidder (such party, the "Purchaser"). In connection with the APA, the Debtor also has filed a motion to assume of the executory contracts set forth in Exhibit A hereto (the "Contracts") and assign them to Purchaser pursuant to Section 365 of the Bankruptcy Code (the "Motion to Assume"). A copy of the Motion to Assume is attached hereto as Exhibit B.

Any defaults existing under the Contracts will be cured. The Purchaser also will provide adequate assurances of future performance under the Contracts.

You are receiving this Notice because the Debtor's records indicate that you are a party to an executory contract with the Debtor which the Debtor intends to assume and assign to the Purchaser as part of the sale transaction contemplated

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CONTRACTS AND NOTICE OF HEARING

1 by the APA. Please note, however, that the list of Contracts in Exhibit A hereto
2 remains subject to further review. Debtor reserves the right to at anytime up to
3 the closing date of the APA, and even after entry of an order granting in whole or
in part the Motion, to elect not to assume any contract.

4 **YOU ARE HEREBY NOTIFIED** that unless within [21 (twenty-one)] days of the service
5 date of this Notice you file a written objection to the Assumption Motion, **and set forth**
6 the specific grounds for such objection and your relation to the case, with the Clerk of
7 the Court at the United States Bankruptcy Court for the District of Oregon, 1001 SW 5th
8 Avenue, Courtroom No. __, Portland, Oregon 97204 and serve a copy to Howard M.
9 Levine, c/o Sussman Shank LLP, 1000 SW Broadway, Suite 1400, Portland, Oregon
97205, 503-227-1111, the Debtor will submit an order granting the Motion to Assume
and allowing the assumption and assignment of the Contracts without further notice or
hearing.

10 **YOU ARE FURTHER NOTIFIED THAT** a final hearing on the Motion to Assume, and
11 any objections filed to it, is set for ____, ____, **2011, at __:__0 __.m.**, in the United
12 States Bankruptcy Court, 1001 SW Fifth Avenue, __ Floor, Portland, Oregon 97204.
Testimony may be received at the hearing.

13 DATED this 17th day of August, 2011.

14 SUSSMAN SHANK LLP

15 By _____
16 Howard M. Levine, OSB No. 800730
17 Timothy A. Solomon, OSB No. 072573
Attorneys for Debtor and Debtor-in-Possession

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CONTRACTS AND NOTICE OF HEARING